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Alma J. Janke et ux v. George L. Beckstead, Jr. et ux ; Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT of the STATE OF UTAH

ALMA J. JANKE et ux,
Plaintiffs and Respondents,

—vs.—

GEORGE L. BECKSTEAD, JR. et ux,
Defendants and Appellants.

Case No. 8866

RESPONDENTS' BRIEF

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STATEMENT OF FACTS

In January, 1951, the Plaintiffs agreed to purchase a tract of improved real estate from the Defendants. The sale was negotiated by an uncle of one of the Defendants. Both the Earnest Money Agreement and the Uniform Real Estate Contract were executed in January, 1951. The Plaintiffs and their family commenced occupying the

home shortly thereafter. On several occasions during the ensuing months the parties discussed a sale to the plaintiffs of property adjoining plaintiffs on the east and south and owned by the defendants. In December, 1951, the final Warranty Deed was executed. On several occasions the plaintiffs complained to the Defendants of the flooding of their basement through their septic tank, laterals of which extended under the property to the south on which Mrs. Beckstead's father was growing corn.

In the fall of 1952, the plaintiffs received their first real property tax notice. Both were disturbed by the description in the notice and discussed the matter on two occasions with the defendants. The Defendants reassured them. In the Summer of 1953, Mr. Dunster, father of Mrs. Beckstead, had had called to his attention that the point of commencement in the description of his nearby property was the center of 9th East Street, a highway running north and south along the west boundary of the Plaintiffs' property. The Defendants thereupon conducted an on-the-ground survey and drove stakes on each corner. Some months later, the Defendants notified the Plaintiffs of a claimed error in the transaction.

In August, 1956, the Defendants attempted to fence off a strip along the east edge of the Plaintiffs property and this law suit was commenced.

The Plaintiffs prayed for a reformation of the deed to show the proper description, especially, the point of commencement, damages for interference with Plaintiffs' septic tank, and for an easement for the laterals. At Pretrial the Defendants agreed to an easement for the said laterals.

The Trial Court found against the Plaintiffs on their claim for damages and for an injunction, but found that the intention of the parties was to convey a tract of land 200 feet by 140 feet commencing at a certain fence post located on the northwest corner of the plaintiffs' property, and along the east edge of Ninth East Street.

The Defendants have appealed from the findings of the District Court.

STATEMENT OF POINTS

Point I. THIS COURT WILL NOT DISTURB THE FINDINGS OF A LOWER COURT UNLESS THE WEIGHT OF THE EVIDENCE IS CLEARLY AGAINST THE TRIAL COURT'S FINDINGS.

Point II. THE EVIDENCE IS CLEAR AND CONVINCING IN SUPPORT OF THE FINDINGS OF THE TRIAL COURT INASMUCH AS THE WRITTEN INSTRUMENTS OF CONVEYANCE TO THE PLAINTIFFS DID NOT CONFORM TO THE INTENTION OF THE PARTIES.

Point III. REFORMATION OF A DEED TO CONFORM TO THE INTENTION OF THE PARTIES IS AN EXCEPTION TO THE PAROL EVIDENCE RULE.

ARGUMENT

Point I. THIS COURT WILL NOT DISTURB THE FINDINGS OF A LOWER COURT UNLESS THE WEIGHT OF THE EVIDENCE IS CLEARLY AGAINST THE TRIAL COURT'S FINDINGS.

The foregoing statement of Utah law is so well es-

tablished as to be almost axiomatic. The Utah court has spoken clearly on this point.

In the 1954 case of *Clyde v. Clotworthy,* 1 Utah 2d 251, 265 P. 2d 420 cited at 4 Utah L. R. 325, Justice Crockett laid down the rules succinctly and clearly. Citing 16 Am. Jur. 531, Deeds, Sec. 168, he wrote:

> "Where an instrument or instruments of title leave ambiguity or uncertainty as to intent, the Court may look to surrounding circumstances to determine it.
>
> "After the trial court has done so, we will not disturb his findings nor the judgment based thereon unless the weight of the evidence is clearly against them or he has misapplied principles of law or equity."

In the more recent case of *Randall v. Tracy Collins Trust Co.,* 6 Utah 2d 18, 305 P. 2d 480, (1956) this Court said (at page 483):

> "In an equity review of facts if the record shows a fair preponderance or even if the evidence is balanced evenly, the trial court findings should be sustained."

See also, *Morley v. Willden,* 120 Utah 423, 234 P. 2d 500 (1951);*Pantages v. Arge,* 1 Utah 2d 105, 262 P. 2d 745, (1953); *Stanley v. Stanley,* 97 Utah 520, 94 P. 2d 465 (1939).

Point II. THE RECORD IS CLEAR AND CONVINCING IN SUPPORT OF THE FINDINGS OF THE TRIAL COURT INASMUCH AS THE WRITTEN INSTRUMENTS OF CONVEYANCE DID NOT CONFORM TO THE INTENTION OF THE PARTIES.

The trial Court found:

> "The Court is of the opinion further that the evidence is clear and convincing that at the time the deed was signed, conveying the property from Fay Beckstead to the Plaintiffs that the intention was to convey a strip of land 200 feet deep, beginning on the easterly edge of Ninth East which would be 233 and a fraction feet from the center of Ninth East." (R.172.) See also, Finding No. 5, (R. 177).

The following evidence fully supports the findings of the Trial Court:

1. The Earnest Money Agreement (Exhibit 1) dated January 13, 1951, did not make mention of any right of way nor did it set forth any point of commencement. It simply stated the boundary distances.

2. The Uniform Real Estate Contract (Exhibit 9) dated January 30, 1951, did not make mention of any right of way over the property.

3. The Warranty Deed from Mr. James M. Dunster to his daughter, Fay Dunster Beckstead, (Exhibit 4) dated July 24, 1948, did not make mention of any right of way over the property.

4. The Warranty Deed from the defendant Fay Beckstead to the Plaintiffs (Exhibit 10) dated Dec. 29, 1951, makes no mention of any right of way over the property.

5. The F.H.A. building plat (Exhibit 5) shows all measurements from a line 40 feet from the west side of the home, which corresponds with the evidence as to the location of an old fence line. (Exhibits 1, 2, photographs.) Both Plaintiffs testified that the plat, signed in the lower

right hand corner by Defendant George L. Beckstead, Jr., was given them before their purchase by the said E. R. Beckstead who told them the plat described the ground they were buying. He said "It started, like this print, at the fence line." (R. 122.)

6. During the Spring of 1952 the defendants visited with the Plaintiffs in the home, saw the "dog run" which had been constructed by the Plaintiffs. (R. 64.) The Defendants did not object to the location of the "dog run" at the time although it was located on the land subsequently claimed by the Defendants.

7. Alma J. Janke, also testified that upon receipt of the tax notice in the Fall of 1952, he talked to Defendant George L. Beckstead, Jr. in Dugway, Utah by telephone and upon questioning by Mr. Janke, about the point of commencement, Mr. Beckstead answered: "The property line was at this monument on the north corner." (R. 65.)

8. In the latter part of 1953, Mr. Beckstead and Mr. Dunster measured and surveyed the property with a tape and placed a series of stakes. The point of commencement chosen by Beckstead for his surveying was the fence post on the northwest corner of Plaintiffs' property, on the east edge of Ninth East. (R. 65, 66, 67.) Mr. Janke testified that he took a series of 8 photographs later in the week (Exhibit 3) of the stakes driven in on this occasion. The area encompassed by these stakes was 200 feet by 140 feet commencing at the said stake and fence post. (R. 69, et seq., R. 122.)

9. For over two years the Plaintiffs occupied the parcel of 200 feet by 140 feet measured from the said northwest stake with the full consent of the Defendants until the latter part of 1953. (R. 164, Exhibit 7.)

10. Mrs. Janke testified that Mr. Beckstead told her "That is where it starts" gesturing to the northwest stake. (R. 116, 117, 118.)

11. Mrs. Janke testified that Mr. E. R. Beckstead told the Plaintiffs, prior to purchase and on the occasion he delivered the F.H.A. plat to them that the plat showed the ground they were purchasing. (R. 122.)

Point III. REFORMATION OF A DEED TO CONFORM TO THE INTENTION OF THE PARTIES IS AN EXCEPTION TO THE PAROL EVIDENCE RULE.

Appellants advance as their primary basis for appeal, the enigmatic Parol Evidence Rule. (Appellants' Brief, p. 10 et seq.)

The Rule:

> "Stated in general terms, the force or effect of the rule is to require, in the absence of a showing of fraud, *mistake* or accident, the exclusions of parol or extrinsic evidence to contradict, vary, add to or subtract from the terms of a valid written agreement or instrument." Vol. 2 Jones on Evidence, 4th Ed., at p. 820.

Jones then explains the numerous exceptions to the "rule." At Section 437, Op. Cit., he writes:

> "The rule which permits of the introduction of extrinsic evidence for the purpose of showing that a purported contract has no "legal existence" is frequently invoked where the written memorial of the transaction is attacked on the ground of mistake. The jurisdiction to reform written instruments in cases free from fraud is exercised only when the instrument actually executed differs from what both parties intended to execute and supposed that they were executing or accepting. (Citing *Cram v. Reynolds,* 55 Utah 384, 186 Pac. 100 (1919).
>
> "So in other actions, legal or equitable in their nature, brought on written instruments, either party is at liberty under proper pleadings to prove a mistake and to have reformation of the contract." Jones, p. 833.

Another leading authority in the field, *American Law of Property,* (1952) Vol. III, Section 12.86 states the rule in substantially the same terms:

> "It is the rule that when the evidence discloses any of the recognized grounds for the reformation of instruments generally, equity will reform either a deed or a mortgage so as to express the true intention of the parties. (Citing the early (1900) Utah case, *Center Creek Waters, etc. Co. v. Lindsay,* 21 Utah 192, 60 Pac. 559.) The correction may apply to the exclusion of matters erroneously inserted or the insertion of terms and conditions omitted by mistake."

Another authority states:

> "A latent ambiguity, that is, an uncertainty which does not appear on the face of the instrument but which is shown to exist for the first time by matter outside the writing may be explained or clarified by parol evidence. The surrounding facts and circumstances may be shown for this purpose." (20 Am. Jur. Sec. 1157.)

CONCLUSION

Plaintiffs submit that the terse language of Justice Henriod in *Morley v. Willden,* 120 Utah 423, 235 P. 2d 500 (1951) ably summarizes their position.

> "The voluminous record in this case contains considerable uncontroverted and much controverted evidence. A careful examination thereof leads us to conclude that the trial court's findings and decision are supported by a fair preponderance of the evidence and should remain undisturbed."

Plaintiffs urge this Court to affirm the finding of the Trial Court that a mistake of the parties justified the reformation of the deed. The Judgment of the Trial Court should be affirmed.

Respectfully submitted,

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